

**IN THE REGIONAL DIVISION OF THE CAPE  
HELD IN THE SPECIALISED COMMERCIAL CRIME COURT  
BELLVILLE**

**Case no: SH7/19/2013**

**In the matter of:**

**THE STATE**

**versus**

**360 Aviation (Pty) Ltd, in terms of section 332 of Act 51 of 1977 a  
company with limited liability duly incorporated and registered in terms  
of the company laws of the Republic, as represented by Barry  
Oberholzer, (Accused 1)**

**and**

**Barry Oberhozer (Accused 2)**

**(Hereinafter referred to as “the accused”)**

---

**DRAFT CHARGE SHEET**

---

**PREAMBLE TO COUNTS 1-2**

**WHEREAS at all times relevant to the charge sheet:**

1. The accused operated under the style of “360 Aviation (Pty) Ltd”, a company with limited liability duly incorporated and registered with the company laws of the Republic, with its principal place of business at Convair Road, Cape Town International.

2. The accused was the sole director of the above mentioned company at the relevant time.
3. The accused stood in a fiduciary relationship to the company and is obliged to display the utmost good faith towards the company in the dealings with the clients.
4. In August 2010, the business was trading on the brink of bankruptcy.
5. During period 10 January 2010 to 03 March 2011, three (3) civil judgments in respect of arrear payments were handed down against the accused. The total of this debt amounted to R246 991,00.
6. The accused also defaulted on payments as stipulated below during the relevant period:
  - 6.1. 22/03/2011 Credit data User R6258,00
  - 6.2. 21/05/2011 Wesbank R5002,00
  - 6.3. 29/06/2011 FNB Credit card R119 263,00
  - 6.4. 08/09/2011 Discovery Health R1344,00
7. The accused should have been aware that at the relevant that his company was in a precarious financial position.
8. On 10 August 2010, Mr Johan and Elmarie Kleyn entered into sale agreement with the 360 Aviation (Pty) Ltd.
9. Johan and Elmarie Kleyn (hereinafter referred to as "the Kleyn's") are married in community of property and are both co-owners of Motorhaven CC.
10. The subject matter of the deal was fully described in the contract of sale being: 2008 Robinson 44 Raven 2 helicopter with serial number 12499 and having 17 hours of flight time.

11. The total purchase amount of R2 800 000,00 was stipulated for this helicopter. There was an additional amount for Value Added Tax amounting to R392 000,00 that was included in the purchase price.
12. On or about 7 December 2010, the whole purchase amount stated above was paid to 360 Aviation (Pty) Ltd in terms of the contract of sale agreement by the Kleyn's.
13. The helicopter was not delivered during December 2010 and/or January 2011 as per the agreement and the accused gave various explanations for the non performance of the contract.
14. The accused during December-January provided photos of extremely rough seas at Victoria Bay at the coast of Plettenberg Bay as a reason for the delay of non delivery of the said helicopter.
15. The accused informed the complainants in 22 March 2011 that their helicopter arrived.
16. The complainants discovered at that juncture that the helicopter that was delivered materially differed from the one they purchased and which was fully described in the purchase agreement.
17. The one delivered was a 2007 Raven 1 with serial number: 1724 and having 400 hours of flight hours.
18. This helicopter was purchased by 360 Aviation (Pty) Ltd represented by the accused on or about 16 January 2011 from a Spiral Wing Ltd represented by Duncan McDonald.
19. The 2007 Raven 1 helicopter was packed for consignment at Manchester on 23 February 2011.

20. The Kleyn's in viewing this helicopter immediately realised that it was materially different from the one that was purchased.
21. The Kleyns immediately communicated same to the accused and his legal representatives at the time.
22. There was a written agreement that the said helicopter would be kept until such time that the apparent dispute between the parties could be resolved.
23. This was agreed between the accused and his legal representatives and the Kleyn's to protect the Kleyn's interest in the said helicopter until the matter was fully resolved.
24. The accused undertook to repay the complainants from the sale of this second helicopter.
25. The legal representatives of both parties were ad idem on the fact that the helicopter would be retained at Base 4 while the dispute was ongoing.
26. The accused unbeknown to the Kleyn's caused this helicopter to be removed from Base 4, transported to somewhere in America where it was sold.
27. On 4 April 2011, the accused undertook to pay the amount obtained from the sale of the 2007 Raven 1 into the account of the complainants.
28. The accused failed to pay and is still in default of paying the Kleyn's after the subsequent sale of the 2007 Raven 1 to the Kleyn's.
29. The accused together with Izak van Niekerk are the trustees of the Lonestar Trust Account with Masters Reference number IT 329/2007.

30. A substantial portion of money obtained from the sale of the said helicopter went into a Lonestar Trust Firststrand bank account with number 62210826163.
31. The accused subsequent to April 2010 effected withdrawals from the Lonestar bank account for the upkeep of the living of the accused, cosmetic products for the accused and general expenses on behalf of the accused.
32. The accused made payments described as “gifts” to a Mr Merega and further substantial payments to an entity described as “cadg.”
33. At the relevant period various amounts were paid into the Lonestar bank account from an undisclosed source.
34. At the relevant time of making the payment by Mr Kleyn, the accused was under a contractual obligation to disclose any material aspect pertaining to the purchase sale agreement.
35. It was stipulated and agreed between the parties that the capital amount would be returned if there was any failure on either side to perform on their obligations in terms of the contract. Clause 3.2 of the signed contract reads:

*“The Helicopter is sold on, as is, where is (that is in its actual location, state and condition on the Acceptance Date), confirming to the specifications substantially described in schedule 1 to this Agreement. If not delivered as described in schedule 1, this Agreement will become null and void and all deposits and other payments shall be returned to the Buyer, which shall be the sole remedy to the Buyer”.*

36. The Kleyn's went into this contract with a clear understanding that the capital amount would be safe and unencumbered and the company would make good on its commitment to return the capital amount.
37. Furthermore, the undertaking by the accused was that the amount paid by the Kleyn's would only be used for the concluding of the helicopter deal described in the contract.
38. The monies paid by the Kleyn's were utilised mainly for transactions unrelated to the purchase of Raven 2 helicopter and mainly for the accused own benefit.
39. The accused stalled the Kleyn's with promises that helicopter 12499 (Raven 2) would be delivered and that the stormy seas caused the delay in February 2011.
40. The helicopter that was delivered in March 2010 was only placed on a cargo boat in March 2011.
41. The helicopter that not exposed to the sea conditions at Plettenberg bay as explained by the accused to the Kleyn's.
42. The accused delayed the delivery of the said helicopter in an attempt to stave off the Kleyn's.
43. During this period of stalling, the money paid for the procurement of the helicopter was used by the accused for other unrelated purposes and substantially for payments from which he could personally benefit.

## **COUNT 1**

**NOW THEREFORE** the accused is guilty of Fraud

In that between June 2010 and May 2011 and at or near Cape Town in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent Johan and Elmarie Kleyn that:

360 Aviation was financially stable to fulfil its financial obligations and would be in a position to return the capital amount paid by the Kleyn's in terms of the agreement; and/or

The subject matter of the deal was a 2008 Robinson 44 Raven 2 with serial number 12499; and/or

The accused never disclosed the fact that the 2008 Robinson 44 Raven 2 with serial number 12499 was not available but induced the Kleyn's to make further payments at a stage when there was a duty upon him to have disclosed this fact; and/or

the deposit from the Kleyn's would be utilised to secure the helicopter deal and not be used on the accused lavish lifestyle and expenses; and/or

that the Raven 1 helicopter would be sold to partly set off the amount paid by the complainants,

to the prejudice and/or potential prejudice the Kleyn's amounting to a loss of approximately R3 192 000,00 (three million one hundred and ninety two rand)

whereas when the accused misrepresented as aforesaid, he knew that:

he would use the Kleyn's money for other financial commitments and on his own personal expenses and would not be in a position to repay them; and/or

he would not be able deliver the 2008 Robinson 44 Raven 2 with serial number 12499 which would lead to the cancellation of the deal; and/or

he knew that the monies paid in by the Kleyn's would not be secured upon termination of the contract but used the money knowingly that he would not be able to repay them; and/or

at certain point of the transaction it became abundantly clear to him that he could not deliver the helicopter but failed to disclose same because he knew it would impact on the payment of further amounts by the Kleyn's; and/or

he would not use the money obtained from the Kleyn's to secure the Helicopter agreed upon; and/or

he knew that the money obtained from the sale of the Raven 1 helicopter would not be used to repay the complainants,

And thus committed the crime of Fraud.

Alternative to count 1:

The accused is guilty of **THEFT**

In that on or about June 2010 and May 2011 at or near Cape Town in the Regional Division of the Cape, the accused unlawfully and intentionally misappropriated the of R3 192 000,00 (three million one hundred and ninety two rand), under the control and/or lawful possession of Motorhaven CC and/or the Kleyn's.

## **COUNT 2**

**Contravention of section 22(1) read with section 77 of the Companies of Act 71 of 2008 (Reckless or fraudulently conducting of the business of a company)**

In that during the period June 2010 and May 2011, and at or near Cape Town in the Regional Division of the Cape, the company of which the accused was a director, carried on recklessly or with intent to defraud the buyer as set out in the preamble and count 1, the accused being a party to the carrying on of the business in the manner as aforesaid;



In that payments were directly or indirectly made to benefit the accused and/or other persons unrelated to the purchase sale agreement;

And in that the said payments made no legitimate business sense, especially as the accused embarked on liquidation proceedings and thereby effectively quashing the possibility of the Kleyn's recovering their money.

### **COUNT 3**

**The Accused is guilty of the contravention of section 4(a) and/or (b) read with sections 1 and 4 (i), 4 (ii) and 8 of the Prevention of Organised Crime Act, Act no 121 of 1998**

IN THAT during the period June 2010 and May 2011 and at/or near Cape Town in the Regional Division of the Cape, the Accused did wrongfully and unlawfully, whilst he knew or reasonably ought to have known that certain property, to wit money in the total amount of approximately R3 192 000,00 (three million one hundred and ninety two rand) was or formed the proceeds of unlawful activities; and

performed acts in connection with such property in that money were transferred to other bank accounts and/or money were used on his personal expenses and/or used to deposit in offshore accounts which acts had or were likely to have the effect-

of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which the accused had in respect thereof;

aa. to avoid prosecution; or

bb. to remove or diminish property acquired directly, or indirectly, as a result of the commission of an offence.

### **COUNT 4**

**CONTRAVENTION OF SECTION 7(1) READ WITH SECTIONS 1, 8 AND 36(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, NO 37 OF 2002**

In that during the July 2010 and May 2011 and at or near Cape Town, in the Regional Division of the Cape, the accused wrongfully and unlawfully acted or offered to act as a financial services provider by providing financial intermediary advice and/or facilitating finance applications, whilst no licence was issued under section 8 of the FIAS Act and/or no application was lodged by the accused to become an authorised financial services provider in terms of section 7(1) of the FIAS Act.

Penalty: A person who contravenes or fails to comply with any provision of the FIAS Act is guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 15 years.

**COUNT 5**

**PREAMBLE TO COUNT 5**

1. The complainant is Benaja Trust ("the trust") duly represented by Pierre Uys.
2. On 27 August 2010, Pierre Uys on behalf of entered into a purchase and sale agreement with the 360 Aviation (Pty) Ltd.
3. The subject matter of the deal was fully described in the contract of sale being: 2006 Robinson 44 Raven 2 helicopter with serial number 11309 .
4. The selling price for this helicopter was the amount of R2 650 000,00.

5. The complainant paid the 10% deposit amounting to R65000,00 31 August 2010.
6. It was a clear stipulation in the contract that the deposit would remain refundable until finance is approved.
7. The purchase of the helicopter was subject to the trust obtaining the necessary finance from a financial institution.
8. The complainant went into this contract with a clear understanding that the deposit amount would be kept in trust and that it would be immediately available if finance application was not approved by a banking institution.
9. Furthermore, the understanding was that the amount paid by the complainant would only be used for securing the helicopter described in the contract.
10. Subsequent to the payment of the deposit, the trust applied for finance with Wesbank for the balance of the purchase price as contemplated in the agreement of sale.
11. On 7 December 2010, the trust's application for finance was unsuccessful and had been declined.
12. The accused was immediately informed of this and the complainant requested repayment of the deposit.
13. The accused could not refund the total amount and paid in R65000,00 on or about 9 December 2010.
14. The accused thereafter failed to make payment after providing assurances that he would do so.

15. On 11 May 2011 a further R75000,00 was paid by the accused into the trust account.

16. No further payments were made.

**NOW THEREFORE** the accused is guilty of Fraud

In that on or about 27 August 2010 and at or near Cape Town in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Pierre Petrus Uys and/or Benaja Trust that:

360 Aviation was financially stable to fulfil its financial obligations and would be in a position to return the capital amount paid by the Benaja trust in terms of the agreement; and/or

The deposit paid by the complainant would be kept in trust and/or secured for repayment if financing application by the complainant were unsuccessful,

to the prejudice and/or potential prejudice the Kleyn's amounting to a loss of approximately R265 000,00 (two hundred and sixty five thousand rand)

whereas when the accused misrepresented as aforesaid, he knew that:

he would use the complainants money for other financial commitments and on his own personal expenses and would not be in a position to repay the complainant if the financing application fell through; and/or

he knew that the monies paid in by the complainant would not be secured upon termination of the contract but used the money knowingly that he would not be able to repay them; and/or

he was not entitled to utilize the money in any manner pending the finalisation of the application for finance,

and thus committed the crime of Fraud.

**Alternative to count 5:**

The accused is guilty of THEFT

In that on or about 27 August 2010 at or near Cape Town in the Regional Division of the Cape, the accused unlawfully and intentionally misappropriated the money amounting to R265 000,00 under the control and/or lawful possession Benaja Trust and/or Pierre Uys.

**COUNT 6: FRAUD**

**PREAMBLE TO COUNT 6**

Whereas at all times relevant to the charge sheet:

1. The complainant, Johan Gysbert van Niekerk met the accused at the Crossfit Protea Gym in Paarl.
2. The complainant, is a director of Star South (Pty) Ltd and RONSA (Pty) Ltd, both businesses duly incorporated in terms of the laws of South Africa, having its principal place of business at 9 Church Street, Wellington and Durban respectively.
3. The above mentioned companies are in the businesses of importing and exporting of cargo into or out of South Africa.

4. The accused indicated that he wanted to import tiles from the Middle East into South Africa and therefore wanted the assistance of complainant.
5. The accused contacted Raven Chetty, who worked at the RONSA (Pty) Ltd offices in Durban, for the processing the importation of three containers containing tiles.
6. The accused in e-mail communication that he wanted to import tiles.
7. The cargo of three containers that were stopped by the Customs and Excise officers at ...
8. On inspection of the containers, it was discovered that the cargo contained cigarettes.
9. The importation of cigarettes subscribes to different procedures and specified taxes are also payable for the importation of cigarettes.
10. The complainant, representing RONSA (Pty) Ltd would never have had entered into the contract, if they knew that it was in fact cigarettes that were imported.
11. The material loss suffered at this stage is R647 734,09 which comprises of the quoted fee, additional expenses, the legal cost due to the arrest of the drivers and the detention of the trucks and containers.
12. The company's reputation has further been severely prejudiced as it had an unblemished reputation in the import-export industry.
13. The complainant is going to suffer enormous financial loss as a result of the accused's conduct.
14. The accused also did not pay for the services delivered by Ronsa (Pty) Ltd.

15. On 09 March 2015, the complainant received notice that an amount of R260 545,00 was made into the Ronsa's account on a ABSA/Barclays letterhead.

16. This payment never reflected in the bank account of RONSA (Pty) Ltd.

## **COUNT 6**

**Read with the minimum sentence provisions of section 51(2)(a) of the Criminal Law Amendment Act 105 of 1997 with applicable provision of Part II of Schedule 2 of Act 105 of 1977: "Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft- (a) involving amounts of more than R500 000,00."**

**NOW THEREFORE** the accused is guilty of Fraud

In that on or about 27 February 2015 and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Star South (Pty) Ltd and/or RONSA (Pty) Ltd. and/or Johan van Niekerk,

that the subject matter of the cargo to be imported was tiles and could be imported without rigorous procedures governing it,

to the prejudice and/or potential prejudice of Star South (Pty) Ltd and/or RONSA (Pty) Ltd. and/or Johan van Niekerk amounting to a loss of R647 734,09 plus future prejudice as a result of reputational consequences,

whereas when the accused misrepresented as aforesaid, he knew that: the complainant would never have had imported cigarettes on behalf of the accused, that he side-stepped the import taxes and onerous procedures

needed to be adhered to for the import of cigarettes, that stipulating it as tiles circumvented the protection mechanisms in respect of importing cigarettes

and thus committed the crime of Fraud.

**Alternative to count 6:**

The accused is guilty of **THEFT**

In that on or about 27/02/2015 at or near Paarl in the Regional Division of the Cape, the accused unlawfully and intentionally misappropriated the of R647 734,09 under the control and/or lawful possession of Star South (Pty) Ltd and/or RONSA (Pty) Ltd. and/or Johan van Niekerk,

**COUNT 7**

**NOW THEREFORE** the accused is guilty of Fraud

In that on or about 09 March 2015 and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Star South (Pty) Ltd and/or RONSA (Pty) Ltd. and/or Johan van Niekerk,

that the document produced and e-mailed for proof of payment on a ABSA letterhead to the complainant, truthfully and correctly stated the position at that stage,

to the prejudice and/or potential prejudice of Star South (Pty) Ltd and/or RONSA (Pty) Ltd. and/or Johan van Niekerk amounting to a loss of R260 545,00,

whereas when the accused misrepresented as aforesaid, he knew that:



the document was irregular and that no payments were made into the complainants account,

and thus committed the crime of Fraud.

### **Alternative count 7: FORGERY**

That the accused are guilty of the crime of FORGERY.

IN THAT on or about 09/03/2015 and at or near Paarl in the Regional Division of the Cape, the accused did unlawfully, falsely and with the intent to defraud and to the prejudice or potential prejudice of Star South (Pty) Ltd and/or RONSA (Pty) Ltd. and/or Johan van Niekerk forge an instrument to wit: a proof of payment on an ABSA letterhead.

### **COUNT 8: FRAUD**

#### **PREAMBLE COUNT 8**

Whereas at all times relevant to the charge sheet:

1. The accused posted an investment proposal on an investment network site for Capital to acquire machinery for the manufacture of a brand Cigarettes called Rocco for a Cyprus based company called Alpheceti.
2. The accused manufacturing business was called Atlantic Tobacco in Paarl.  
The accused indicated that he had acquired the licence to produce cigarettes for Alphacetti.
3. The central highlight of this investment entailed the investor to receive 50% shareholding in Atlantic Tobacco.

4. The complainant, Christopher Alexander Weir of Kensington place CC, expressed an interest to invest.
5. Christopher Alexander Weir arranged a meeting with the accused at Val de Vie clubhouse, where the accused was also resident.
6. The accused secured a lease for the premises to manufacture the cigarettes at the old British American Tobacco premises in Berg River, Paarl.
7. The complainant signed certain statutory documents and Loan Agreements in respect of the business proposition of Atlantic Tobacco.
8. The accused indicated that he travelled to Dubai to ensure that the machine was correct for the purposes envisaged.
9. During September 2013, the accused advised that everything was set for the importation of the machine.
10. The accused advised that he had contracted a procurement company based in Durban to facilitate the importation of the machinery.
11. The complainant was forwarded a message from on Shie Shahied of Lonestar Procurements (Pty) Limited.
12. The complainant received an invoice from the above procurement company indicating that the accused paid the sum of R2342 200,00 in respect of the importation of the machinery.
13. On 27 September 2013, the complainant made payment in the amount of R 2 290 723,42 from his Investec account into ABSA bank account with number: 9208782083 believing that it was into the Lonestar Procurement (Pty) Ltd account facilitating the importation of the machinery.
14. The accused never informed the accused that he was the sole beneficiary and trustee of this account when there was clearly a duty

upon him in terms of the business venture and/or the contracts that were between him and the complainant.

15. The complainant was made to believe that the machine was successfully loaded and it appeared that all steps were implemented to start up the business.

16. Atlantic Parcel Services opened up a bank account at First National Bank with account number 62441511070.

17. The accused together with the complainant would have access to the account but the accused as the managing director would have access for purposes of effecting payments.

18. On 20 November 2013, the complainant deposited R50 000,00 for rental of the building and to defray day to day expenses.

19. During December 2013, the accused indicated that both parties had to invest R300 000,00 to cover the amount required by SARS in respect of a bond.

20. This amount was paid into an account held at Rand Merchant Bank.

21. This account is a fictitious account.

22. The complainant deposited R300 000,00 in the Atlantic Tobacco account.

The accused during February 2014 advised the complainant that the machinery was almost cleared at customs.

23. The complainant paid an amount of RR260 000,00 into the Atlantic Tobacco account on 12 February 2015.

24. On 20 February, the complainant paid R300 000,00 into the Rand Merchant Bank account, ostensibly for an increase by SARS on its bond facility.
25. On 18 February 2014, the accused advised the complainant that the vat number was 4880245982.
26. The complainant made further payments of R130 000,00 and R20 000 on 11 March 2014 in respect of supposedly filters and rent respectively into the Atlantic Tobacco account.
27. The accused indicated that he had further lucrative contracts to supply Philip Morris cigarettes to the Kurdistan Government.
28. The accused advised that ITM a Netherlands based company with offices in Johannesburg that could assist in repairing the machine as a result of supposed rust damage.
29. The complainant paid an amount of R150 000,00 into the ABSA account number: 91234074013
30. The beneficiary of this account is the director of Heli Capital (Pty) Limited, Marcel Oberholzer.
31. Marcel Oberholzer is the brother of the accused.
32. The machinery/equipment for the manufacturing of the cigarettes in respect Atlantic Tobacco did not exist.

#### **COUNT 8: FRAUD**

**Read with the minimum sentence provisions of section 51(2)(a) of the Criminal Law Amendment Act 105 of 1997 with applicable provision of Part II of Schedule 2 of Act 105 of 1977: "Any offence relating to**

**exchange control, corruption, extortion, fraud, forgery, uttering or theft-  
(a) involving amounts of more than R500 000,00.”**

**NOW THEREFORE** the accused is guilty of Fraud

In that between August 2013 and June 2014 and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Christopher Weir and/or Kensington Place CC,

that there was a *Bona Fide* business proposal on the table to manufacture cigarettes and/or,

that monies paid into accounts were for the accountholders as specified by him on behalf of the business venture of manufacturing cigarettes, and/or

the creditors and/or entities requiring payment for the manufacturing of cigarettes were bona fide expenses of Atlantic Tobacco, and/or

that the SARS bank account for payment of the bonded warehouse was a Rand Merchant Bank account, and/or

that ITM were a Netherlands based company assisting to repair the machinery, and/or

that the machinery in respect of the manufacturing of the cigarettes were obtained from the suppliers,

and/or that repair costs needed to be paid in respect of the machinery, and/or

that he travelled overseas to negotiate and consult about the business in respect of the cigarettes machinery, and/or

that the funds invested by the complainant would be used to get the cigarette production facility operational,

to the prejudice and/or potential prejudice of Christopher Weir and/or Kensington Place CC, amounting to a loss of R3200 723,42

whereas when the accused misrepresented as aforesaid, he knew that:

there was no Bona Fide business proposal on the table to manufacture cigarettes and/or,  
that monies paid into accounts were not for the accountholders as specified by him on behalf of the business venture of manufacturing cigarettes, and/or the creditors and/or entities ostensibly requiring payment for the manufacturing of cigarettes were not bona fide expenses of Atlantic Tobacco, and/or  
that it was a fictitious SARS bank account for payment of the bonded warehouse was a Rand Merchant Bank account, and/or  
that ITM were a Netherlands based company but not assisting to repair the cigarette machinery and the money went into a company's account administered by his brother, and/or  
that the machinery in respect of the manufacturing of the cigarettes were not obtained from the suppliers,  
and/or that there were no repair costs needed to be paid in respect of the machinery, and/or  
that he did not travel overseas to negotiate and consult about the business in respect of the cigarettes machinery, and/or  
that the funds were not used to get the production facility operational and that the funds were not for the benefit of Atlantic Tobacco but were utilized for his own interest unrelated to the cigarette production facility;  
and thus committed the crime of Fraud.

**Alternative to count 8:**

The accused is guilty of THEFT

In that on or about August 2013 to June 2014 at or near Paarl in the Regional Division of the Cape, the accused unlawfully and intentionally misappropriated the of R3200 723,42 plus interest under the control and/or lawful possession of Christopher Weir and/or Kensington Place CC.

**COUNT 9: FRAUD**

## **PREAMBLE COUNT 9**

WHEREAS at all times relevant to the charge sheet:

The accused is the sole shareholder of Phoenix Crossfit Paarl Proprietary Limited.

1. The complainant, Christopher Weir was served with a summons commencing action initiated by the plaintiff, Alac Proprietary Limited against Crossfit Paarl Proprietary Limited.
2. The action is in respect of arrear rentals in respect of a purported lease agreement entered in respect of a premise situate at Unit 3, Riverside Industrial Park, Bella Vista.
3. The current arrear rental are R458 577,31 plus interest at 2% per month.
4. The complainant have never been an interested party or associated with the business of Crossfit Paarl [Protea Gym] Proprietary Limited.
5. The claim by the plaintiffs is premised on the fact that the complainant signed the lease agreement as well as suretyship at the time of the execution of the lease.
6. The complainant does not bear knowledge of these contracts and did not sign same.
7. The accused was the responsible person for negotiating the lease on behalf of ostensibly the complainant.
8. The accused had a direct and vested interest in the business of Crossfit Paarl Proprietary Limited.

## **Count 9**

**NOW THEREFORE** the accused is guilty of Fraud

**In that** on or about April 2014 and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Alac (Pty) Ltd and/or Christopher Weir and/or Diego Grabia:

that a lease agreement and suretyship agreement was duly entered between Christopher Weir and Alac Proprietary Limited in respect of the property situated at Unit 3, Riverside Industrial Park, Bella Vista.

to the prejudice and/or potential prejudice of Alac (Pty) Ltd and/or Christopher Weir and/or Diego Grabia: amounting to a loss of R458 577,31 plus interest

whereas when the accused misrepresented as aforesaid, he knew that: the complainant never signed the said agreements, that the signature on behalf of the complainant was a forgery and never intended to pay Alac Proprietary Limited timeously or at all,

and thus committed the crime of Fraud.

**Alternative to count 9:**

The accused is guilty of THEFT

In that on or about 10/04/2015 at or near Paarl in the District of Paarl, the accused unlawfully and intentionally misappropriated the of R458 577,31 plus interest under the control and/or lawful possession of Alac Proprietary Limited

**Further alternative count 9: FORGERY**

That the accused are guilty of the crime of FORGERY.



IN THAT on or about 10/04/2015 and at or near Paarl in the District of Paarl, the accused did unlawfully, falsely and with the intent to defraud and to the prejudice or potential prejudice of the Alac (Pty) Ltd and/or Christopher Weir: forge instruments a lease agreement and a suretyship agreement as outlined in the preamble.

#### **COUNT 10**

##### **DEFEATING THE ADMINISTRATION OF JUSTICE**

THAT the accused is guilty of the crime of Defeating or Obstructing the Administration of Justice

IN THAT upon or about the 14<sup>th</sup> day of May 2015 and at or near Paarl in the Regional Division of the Cape, the accused did unlawfully and with intent to defeat or obstruct the course of justice, commit an act, to wit having Christopher Wier summoned for arrear rental in terms of a lease agreement which act defeated or obstructed the administration of justice.

#### **COUNT 11: FRAUD**

**NOW THEREFORE** the accused is guilty of Fraud

**In that** on or about 10 April 2015 and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Monette van Antwerpen and/or BMW Paarl that:

Proof of payment on a notification of a FNB letterhead for the service of his BMW vehicle was correct and true reflection of what it represented;

to the prejudice and/or potential prejudice of BMW and/or Monette van Antwerpen amounting to a loss of R24 811,42

whereas when the accused misrepresented as aforesaid, he knew that: the recipient account [payee details] were incorrectly recorded but nonetheless presented the document as proof of payment to ensure the release of his BMW vehicle,

and thus committed the crime of Fraud.

**Alternative to count 10:**

The accused is guilty of THEFT

In that on or about 10/04/2015 at or near Paarl in the Regional Division of the Cape, the accused unlawfully and intentionally misappropriated the of R24 811,42, under the control and/or lawful possession of BMW and/or Monette van Antwerpen.

**Further alternative to count 10:**

That the accused are guilty of the crime of FORGERY.

**IN THAT** on or about 10/04/ 2015 and at or near Paarl in the Regional Division of the Cape, the accused did unlawfully, falsely and with the intent to defraud

and to the prejudice or potential prejudice of the BMW Paarl and/or presented a forged document to wit: FNB notification of payment.

## **COUNT 11: THEFT**

### **PREAMBLE**

1. The accused went into a deal for the sale of cigarettes with the complainant, Omar Abdulahl Omar [a Somalian citizen].
2. On the 09 May 2015, a truck with ostensibly cigarettes were given to the complainant in exchange for R250 000,00.
3. The money was handed over to the accused.
4. The accused indicated that he worked for BAT Stellenbosch in the manufacturing and distribution of cigarettes.
5. When the contents of the boxes of the truck were inspected, it was empty.
6. The accused wallet was found underneath the front passenger seat of the vehicle.
7. The truck mysteriously vanished after being parked at the Bellville police station.

The accused is guilty of **THEFT**

In that on or about 09/05/2015 at or near Paarl in the Regional Division of the Cape, the accused unlawfully and intentionally misappropriated the amount of

R250 000,00, under the control and/or lawful possession of Omar Abdulahl Omar.

## **COUNT 12: FRAUD**

**NOW THEREFORE** the accused is guilty of Fraud

**In that** between 1 December 2014 and 25 February 2015 and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Michael Walton and/or Kill Cliff that:

He was intending to pay for products supplied to CrossFit Protea and the FNB proof of payment reflected the truthful and correct state of affairs

to the prejudice and/or potential prejudice of Michael Walton and/or Kill Cliff amounting to a loss of R13 789,44

whereas when the accused misrepresented as aforesaid, he knew that: he would not pay for the goods and that the proof of payment was a fabrication to stall the proceedings thus committed the crime of Fraud.

## **Alternative count 12: FORGERY**

That the accused are guilty of the crime of FORGERY.

**IN THAT** on or about 31 March 2015 and at or near Paarl in the Regional Division of the Cape, the accused did unlawfully, falsely and with the intent to defraud and to the prejudice or potential prejudice of the Michael Walton and/or Kill Cliff presented a forge document to wit: FNB notification of payment.

### **COUNT 13: FRAUD**

**NOW THEREFORE** the accused is guilty of Fraud

**In that** between 1 December 2014 and 25 February 2015 and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Michael Walton and/or Kill Cliff that:

He was intending to pay for products supplied to CrossFit Protea and the FNB proof of payment reflected the truthful and correct state of affairs

to the prejudice and/or potential prejudice of Michael Walton and/or Kill Cliff amounting to a loss of R13 789,44

whereas when the accused misrepresented as aforesaid, he knew that: he would not pay for the goods and that the proof of payment was a fabrication to stall the proceedings thus committed the crime of Fraud.

### **COUNTS 14-15**

### **PREAMBLE**

At all times relevant to the charges:

1. On 5 February 2012, the accused entered into a lease agreement in respect of Erf 566 Val de Vie Estate with Ian Mc Pherson.
2. The accused and his wife has been residing at this premises ever since.
3. Over the period till today, the accused defaulted on payments on various occasions.
4. The accused is in arrears for the period March, April, May and June in the amount of R135 000,00.

5. The accused forwarded two "Notification of Payments" documents via e-mail dated 17 March 2015 in the amount of R30 000,00 and 21 April 2015 in the amount of R105 000,00 respectively.
6. No payments were made into the complainant's account evidencing these payments.

#### **COUNTS 14-15**

#### **Now therefore the accused is guilty of FRAUD**

**In that** on or about the dates as per column 1 of the schedule and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Ian Donald Mc Pherson that:

That the FNB proof of payment truthfully and correctly reflected the payment into the complainants account,

to the prejudice and/or potential prejudice of Ian Donald Mc Pherson amounting to a loss of the amount stipulated in Column 2 of the schedule,

whereas when the accused misrepresented as aforesaid, he knew that: the documents were not proof of payment into the complainants account but that the documents were forgeries.

#### **SCHEDULE**

<b><u>Count</u></b>	<b><u>Dates</u></b>	<b><u>Amounts</u></b>
<b><u>s</u></b>		
14	17/03/2015	R30 000,00
15	21/04/2015	R105 000,00

**Alternative counts:14-15: FORGERY**

That the accused are guilty of the crime of FORGERY.

IN THAT on or about the dates in the above schedule and at or near Paarl in the Regional Division of the Cape, the accused did unlawfully, falsely and with the intent to defraud to Ian Donald Mcpherson produced a forged instrument to wit: a proof of payment on a FNB letterhead as outlined in the schedule above.

**COUNTS 16-19: FORGERY**

**PREAMBLE TO COUNTS 16-19:**

1. The complainant Cipla as represented by Shaun Patrick Clulow is a pharmaceutical company which provides amongst other things supplementary nutritional products to various outlets.
2. The accused provided 4 electronic “confirmation of payment” over a period of November 2014 to April 2015.
3. These payments were not in fact received by the complainant.

That the accused are guilty of the crime of **FORGERY**.

IN THAT on or about the dates as per schedule 2 and at or near Paarl in the Regional Division of the Cape, the accused did unlawfully, falsely and with the intent to defraud and to the prejudice or potential prejudice of CIPLA and/or Shaun Clulow produced forged instruments to wit: “confirmation of payments” on FNB letterheads as outlined below.

## **SCHEDULE 2**

<b><u>Count</u></b> <b>s</b>	<b><u>Dates</u></b>	<b><u>Amounts</u></b>
12	06/11/2014	R12 649,61,00
13	19/02/2015	R3130,00
14	11/03/2015	R4961,22
15	01/04/2015	R4790,00

## **COUNT 20: FRAUD**

### **PREAMBLE**

1. The accused handled and controlled the finances of Crossfit Gym in Paarl.
2. Crossfit Gym Paarl arranged a fund raising event "ROW FOR WILLEM" on behalf of Willem van der Merwe.
3. The accused withdrew this money from the Crossfit Gym FNB account.

**In that** on or about 16 May 2015 of the schedule and at or near Paarl in the Regional Division of the Cape, the accused did wrongfully, unlawfully, falsely and with the intent to defraud misrepresent to Willem van der Merwe and/or all the contributors of the event that:

All the money raised as the result of the fund raising event would be contributed towards the medical treatment on behalf of Willem,

to the prejudice and/or potential prejudice of Willem van der Merwe and/or all the contributors of the event amounting to a loss in the amount of R25 300,00,



whereas when the accused misrepresented as aforesaid, he knew that:  
the money would be used for his personal benefit.

## **COUNT 21**

Contravention of section 22(1) read with section 77 of the Companies of Act 71 of 2008, (Reckless or fraudulently conducting of the business of a company)

In that during the period January 2014 and May 2015, and at or near Paarl in the Regional Division of the Cape, the company of which the accused was a director [Lonestar Procurement (Pty) Ltd and/or Crossfit Protea], carried on recklessly or with intent to defraud the buyer as set out in the preamble and count 1, the accused being a party to the carrying on of the business in the manner as aforesaid;

In that payments made from the Phoenix Crossfit Protea account, held at FNB Paarl with number 62472288284 ostensibly made on behalf of creditors were directly or indirectly made to benefit of the accused and/or other persons unrelated to these creditors and/or amounts paid in connection with the accused broader business activity, were utilised for unrelated purposes.

## **COUNT 22**

The Accused is guilty of the contravention of section 4(a) and/or (b) read with sections 1 and 4 (i), 4 (ii) and 8 of the Prevention of Organised Crime Act, Act no 121 of 1998

IN THAT during the period January 2014 and May 2015 and at/or near Paarl, in the Regional Division of the Cape, the Accused did wrongfully and unlawfully, whilst he knew or reasonably ought to have known that certain property, to wit

money in the total amount of approximately R 1 million (one million one rand) was or formed the proceeds of unlawful activities; and

performed acts in connection with such property in that money were transferred to other bank accounts and/or money were used on his personal expenses and/or used to deposit in offshore accounts which acts had or were likely to have the effect-

of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which the accused had in respect thereof;

aa. to avoid prosecution; or

bb. to remove or diminish property acquired directly, or indirectly, as a result of the commission of an offence.